



This document is scheduled to be published in the Federal Register on 01/13/2017 and available online at <https://federalregister.gov/d/2016-31496>, and on [FDsys.gov](https://FDsys.gov)

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 2, 13, and 19**

**[FAC 2005-95; FAR Case 2016-004; Item II; Docket No. 2016-0004, Sequence No. 1]**

**RIN 9000-AN18**

**Federal Acquisition Regulation; Acquisition Threshold for  
Special Emergency Procurement Authority**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act for Fiscal Year 2016 to raise the simplified acquisition threshold for special emergency procurement authority.

**DATES:** Effective: **[Insert date of publication in the  
FEDERAL REGISTER].**

**FOR FURTHER INFORMATION CONTACT:** Ms. Camara Francis, Procurement Analyst, at 202-550-0935, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755. Please cite FAC 2005-95, FAR Case 2016-004.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

DOD, GSA, and NASA published a proposed rule in the Federal Register at 81 FR 39882 on June 20, 2016, to implement section 816 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92). FAR 2.101, 13.003, 19.203, and 19.502-2 are being revised to increase the simplified acquisition threshold for special emergency procurement authority from \$300,000 to \$750,000 (within the United States) and from \$1 million to \$1.5 million (outside the United States). The rule would apply to acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. Two respondents provided comments on the proposed rule.

### **II. Discussion and Analysis**

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the comments in the development of the final rule. A discussion of the comments is provided.

#### **A. Summary of changes**

There was no change made to the rule as a result of the comments received. There were no comments on the Initial Regulatory Flexibility Analysis.

## **B. Analysis of public comments**

### **1. Small Business:**

Comment: The respondent identified that the proposed rule did not recognize that the automatic set-asides for small business would apply up to the threshold in paragraph (1)(ii) of the simplified acquisition threshold definition at FAR 2.101 in the case of an emergency acquisition in an outlying area as defined in FAR 2.101.

Response: The proposed rule did not address the issue of the outlying areas. While the comment is out of scope of this rule, the Councils will take the comment under consideration.

### **2. Increased Simplified Acquisition Threshold:**

Comment: The respondent opposes the increase in the special emergency procurement threshold, because increases to the acquisition threshold threaten to compromise the integrity of the Berry amendment, outsource critical portions of the domestic industrial base, and hurt American manufacturers.

Response: The Councils appreciate the comment and acknowledge the concern; however, the increase in the special emergency procurement threshold is statutory in nature.

## **III. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### **IV. Regulatory Flexibility Act**

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The FRFA is summarized as follows:

This final rule implements section 816 of the National Authorization Act for Fiscal Year (FY) 2016, Public Law 114-92. Therefore, the FAR is revised to raise the simplified acquisition thresholds for special emergency procurement authority.

The objective of this final rule is to increase the simplified acquisition thresholds for special emergency procurement authority from \$300,000 to \$750,000 (within the United States) and \$1 million to \$1.5 million (outside the United States) for acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack.

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule.

There was no change made to the rule as a result of the comments received. There were no comments on the Regulatory Flexibility Analysis.

DoD, GSA, and NASA do not expect this final rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule raises the simplified acquisition threshold for special emergency procurements, an arena in which a smaller percentage of small businesses participate, as compared to larger businesses. Between \$300,000 and the increase to \$750,000, 188 total awards were made of which 45 or 24 percent were to small businesses in FY 2014, and 219 total awards were made of which 66 or 30 percent were to small businesses in FY 2015. Between \$1 million and the increase to \$1.5 million, 56 total awards were made of which 10 or 17 percent were to small businesses in FY 2014, and 29 total awards were made of which 9 or 31 percent were to small businesses in FY 2015.

The final rule imposes no reporting, recordkeeping, or other information collection requirements.

There are no known significant alternatives to the rule. The impact of this final rule on small business is not expected to be significant.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

## **V. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

### **List of Subjects in 48 CFR Parts 2, 13, and 19**

Government procurement.

Dated: December 21, 2016.

William F. Clark,  
Director,  
Office of Government-wide  
Acquisition Policy,  
Office of Acquisition Policy,  
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 13, and 19 as set forth below:

1. The authority citation for 48 CFR parts 2, 13, and 19 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

## **PART 2—DEFINITIONS WORDS AND TERMS**

### **2.101 [Amended]**

2. Amend section 2.101, in paragraph (b)(2), in the definition "Simplified acquisition threshold" by removing from paragraphs (1)(i) and (ii) "\$300,000" and "\$1 million" and adding "\$750,000" and "\$1.5 million" in their places, respectively.

## **PART 13—SIMPLIFIED ACQUISITION PROCEDURES**

### **13.003 [Amended]**

3. Amend section 13.003 by removing from paragraph (b)(1) "\$300,000" and adding "\$750,000" in its place.

## **PART 19—SMALL BUSINESS PROGRAMS**

### **19.203 [Amended]**

4. Amend section 19.203 by removing from paragraph (b) "\$300,000" and adding "\$750,000" in its place.

### **19.502-2 [Amended]**

5. Amend section 19.502-2 by removing from paragraph (a) "\$300,000" and adding "\$750,000" in its place.

**[BILLING CODE 6820-EP]**

